

REMARKS

In the Final Office Action mailed July 25, 2008, claims 1-31 were pending and stand rejected. Claims 1, 10, 14, 20, 27 and 29 are amended, and claims 7, 13 and 25 are cancelled in this response. The amendments are considered to place the claims in better condition and remove issues for appeal, and entry of the same is respectfully requested. Reconsideration of the present application as amended and withdrawal of the rejection of claims 1-6, 8-12, 14-24 and 26-31 is respectfully requested.

Claims 1-16 and 18-31 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 6,193,721 to Michelson in view of U.S. Patent No. 7,063,702 to Michelson. Independent claims 1, 20 and 27 are amended in this response to clarify that the distal portion of the holding element is configured to pass through the auxiliary element and into bone underlying the stabilization device when the auxiliary device is mounted to the stabilization device to engage the holding element with the auxiliary element in the manner recited in the claims. Support for the amendments to these claims may be found, for example, in at least Figures 4-7, 16-17, and paragraphs, [0057], [0061], [0065] and [0077].

In the Final Office Action, the Examiner notes that Michelson '721 does not disclose the entire holding element passing through a stabilization device to the spinal area and further wherein the distal end of the holding element has the ability to interact with the an auxiliary element to facilitate rotation or prevent rotation in assisting with the insertion of the spinal stabilization system. Michelson '702 was cited as teaching a holding element in Figs. 1A and 14, 15 wherein the distal portion has engaging portions that assist in rotating an auxiliary element and inserting a probe-like spike (end of screw) into the spinal area. Portion 130 (a lock) was considered to be fixed relative to the spinal anchor and is like an auxiliary element.

In Michelson '702, screw lock 130 is secured to implant 50 after screw 100 is initially positioned through opening 140 of implant 50. Screw 100 includes a head 120 that receives the distal end 152 of screw driver 156 while screw lock 130 is mounted to engagement end 154 of screw driver 156. Screw 100 is threaded into the bone, and screw lock 130 is attached to implant 150 to prevent screw 100 from backing out of implant 50. Once screw 100 is inserted sufficiently to clear threads 118 in opening 140, then screw lock 130 is advanced with screw

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driver 156 to engage threads 118 of implant 50. Screw lock 130 prevents screw 100 from backing out and therefore the screw 100 is not configured to enter into the proximal opening of screw lock 130 and pass through screw lock 130 to engage engagement portion 154 with screw lock 130. See col. 4, line 62 to col. 5, line 35.

In contrast, claim 1 recites an arrangement with “a holding element including a distal portion and a proximal portion, said distal portion including an elongated shaft extending from said proximal portion to a distal end, wherein with said at least one auxiliary element mounted to said stabilization device said distal end of said distal portion is configured for placement into said proximal opening and through said distal opening of said cannulation to advance said shaft through said proximal opening to releasably engage a distal end of said proximal portion with said auxiliary element in an interfitting relationship and position said distal end of said shaft distally of said distal opening of said auxiliary element to enter into bone and engage the spinal column to maintain a positioning of said stabilization device along the spinal column and said distal end of said proximal portion preventing said auxiliary element from moving relative to said stabilization member....” Since the cited references fail to teach this arrangement of features, withdrawal of the rejection of claim 1 is respectfully requested.

Claims 20 and 27 are also amended along these lines. For example, amended claim 20 recites “a holding element including a distal portion positionable in said cannulation of said auxiliary element and configured to enter into bone of the spinal column, a proximal portion extending proximally from said distal portion, and an intermediate portion therebetween, wherein said distal portion includes an elongated shaft extending from said intermediate portion to a distal end, wherein with said at least one auxiliary element mounted to said stabilization device said distal end of said distal portion is configured for placement into said proximal opening and through said distal opening of said cannulation to advance said shaft through said proximal opening to releasably engage a distally oriented engagement surface of said intermediate portion with said proximal engagement surface of said auxiliary element in an interfitting relationship and position said distal end of said shaft distally of said distal opening of said auxiliary element to enter into bone and engage the spinal column to maintain a positioning of said stabilization device along the spinal column” Since the references do not disclose or

suggest this arrangement of features, withdrawal of the rejection of claim 20 is respectfully requested.

Amended claim 27 recites "...wherein with the auxiliary element mounted to the stabilization device said distal tip of said first shaft is configured for placement into a proximal opening of the cannulation and through a distal opening of the cannulation to advance said first shaft through said proximal opening to releasably engage said at least one projection of said intermediate portion with said auxiliary element in an interfitting relationship and position said distal tip of said first shaft distally of the distal opening of the cannulation to enter into bone and engage the spinal column to maintain a positioning of the stabilization device along the spinal column with said at least one projection of said intermediate portion preventing the auxiliary element from moving relative to the stabilization member" As discussed above, the references do not disclose or teach a holding element including the features arranged in this manner, and withdrawal of the rejection of claim 27 is respectfully requested.

Claims 10, 14 and 29 have been amended to maintain consistency with the amendments to their respective base claims. In addition, claims 14 and 29 recite distinguish screw 100 in Michelson '702 since they recite that the shaft of the distal portion includes a smooth surface profile extending proximally from the distal end or distal tip of the distal portion of the holding element. Support for the amendments may be found, for example, in the above figures and paragraph [0062].

Claim 17 stands rejected as being unpatentable under 35 USC §103(a) over Michelson '721 and '702 in view of U.S. Patent Application Publication No. 2003/0083749 to Kuslich et al. Claim 17 depends from claim 1 and is allowable at least for the reasons claim 1 is allowable. Accordingly, withdrawal of the rejection of claim 17 is respectfully requested.

The present application including claims 1-6, 8-12, 14-24 and 26-31 is in condition for allowance, and a Notice of Allowance is respectfully requested. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with respect to the present application.

Respectfully submitted,

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